

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WESTERN WASHINGTON PAINTERS  
DEFINED CONTRIBUTION PENSION  
PLAN TRUST; EMPLOYEE PAINTERS'  
TRUST HEALTH & WELFARE FUND;  
WESTERN WASHINGTON PAINTERS  
APPRENTICESHIP AND TRAINING  
TRUST; WESTERN WASHINGTON  
PAINTERS LABOR MANAGEMENT  
COOPERATION TRUST FUND;  
INTERNATIONAL BROTHERHOOD OF  
PAINTERS AND ALLIED TRADES  
UNION; INTERNATIONAL  
BROTHERHOOD OF PAINTERS AND  
ALLIED TRADES PAINTERS DISTRICT  
COUNCIL NO. 5,

Plaintiffs,

v.

CAPITOL CITY ENTERPRISES, INC. a  
Washington corporation, JOHN B. YATES  
and JANE DOE YATES, husband and wife,  
and the marital community comprised thereof;  
PATRICK A. WEST and JANE DOE WEST,  
husband and wife, and the marital community  
comprised thereof; DENNIS L. MILLER and  
JANE DOE MILLER, husband and wife, and  
the marital community comprised thereof;  
JOSEPH T. POLLARI

CASE NO. C07-5190RJB

ORDER DENYING WITHOUT  
PREJUDICE MOTION FOR  
ORDER OF DEFAULT

and JANE DOE POLLARI, husband and wife, and the marital community comprised thereof; MAURICE A. SCHOUVILLIER and JANE DOE SCHOUVILLIER, husband and wife, and the marital community comprised thereof,

Defendants.

This matter comes before the Court on the plaintiffs' Motion for Order of Default (Dkt. 9). The Court has considered the pleadings filed in support of the motion and the remainder of the file herein.

### **I. BACKGROUND**

According to the complaint, the plaintiffs are joint labor-management employee benefit trust funds ("Plaintiff Trust Funds") created pursuant to §302(c)(5) of the Labor-Management Relations Act, 29 U.S.C. §186(c)(5). Dkt. 2 at 2. The plaintiffs allege violations of a collective bargaining agreement, certain trust agreements, and the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, *et seq.*<sup>1</sup>

On May 17, 2007, counsel appeared on behalf of the defendants. Dkt. 7. On June 15, 2007, the plaintiff moved for entry of default. Dkt. 9.

### **II. DISCUSSION**

The entry of default is governed by Federal Rule 55, which provides as follows: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Local Rule 55 also governs the entry of default:

Upon motion by a party noted in accordance with CR 7(d)(1) and supported by affidavit

<sup>1</sup>The complaint refers to "Exhibit A," which apparently contains portions of the collective bargaining agreement, the trust agreements, or both. The complaint is not accompanied by any exhibits, and "Exhibit A" does not appear to be part of the electronic file.

1 or otherwise, the clerk shall enter the default of any party against whom a judgment for  
2 affirmative relief is sought but who has failed to plead or otherwise defend. The affidavit  
3 shall specifically show that the defaulting party was served in a manner authorized by Fed.  
4 R. Civ. P. 4. A motion for entry of default need not be served on the defaulting party.  
5 However, in the case of a defaulting party who has entered an appearance, the moving  
6 party must give the defaulting party written notice of the requesting party's intention to  
7 move for the entry of default at least five judicial days prior to filing its motion and must  
8 provide evidence that such notice has been given in the motion for entry of default.

9 Local Rule CR 55(a). As explained more fully below, the Court should deny the motion for failure  
10 to comply with Local Rule CR 55(a).

11 First, the plaintiffs' motion is accompanied by an affidavit that does not "specifically show  
12 that the defaulting party was served in a manner authorized by Fed. R. Civ. P. 4." *See* Local Rule  
13 CR 55(a); Dkt. 9 at 3. As evidence that the defendants were properly served, the affidavit  
14 accompanying the motion refers to "Declarations of Service attached as Exhibit A." Dkt. 9 at 3.  
15 No exhibits are attached to the motion or to the affidavit. It appears that Defendant Capitol City  
16 Enterprises, Inc.'s registered agent was personally served on May 7, 2007. Dkt. 5 (Declaration of  
17 Service). It is unclear whether the remaining defendants were served in a manner authorized by  
18 Federal Rule 4. *See* Dkt. 8 at 2 (Declaration of Service providing that copies of the Summons and  
19 Complaint were mailed to the defendants' counsel on May 23, 2007); Dkt. 7 (Defendants'  
20 counsel's notice of appearance providing for service, not including original process, on counsel).

21 Second, the plaintiffs' motion does not include evidence that the allegedly defaulting party  
22 was provided written notice of the plaintiffs' intention to move for the entry of default at least five  
23 judicial days before the motion was filed. *See* Local Rule CR 55(a).

24 The plaintiffs having failed to demonstrate their compliance with Local Rule CR 55 (a),  
25 the Court should deny the motion without prejudice.

### 26 **III. ORDER**

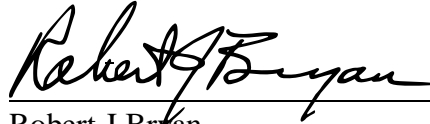
27 Therefore, it is hereby

28 **ORDERED** that the plaintiffs' Motion for Order of Default (Dkt. 9) is **DENIED**

without prejudice.

1 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel  
2 of record and to any party appearing *pro se* at said party's last known address.  
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4 DATED this 19<sup>th</sup> day of June, 2007.

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7 Robert J Bryan  
8 United States District Judge  
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